

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DANIEL P. KIELY,

Plaintiff,

CIVIL CASE NO. 01-40149

v.

HEARTLAND REHABILITATION  
SERVICES, INC.,

HONORABLE PAUL V. GADOLA  
U.S. DISTRICT COURT

Defendant.  
\_\_\_\_\_ /

**ORDER DENYING IN PART DEFENDANTS' MOTION FOR JUDGMENT AS A  
MATTER OF LAW**

At the close of Plaintiff's proofs, Defendants orally moved the Court for judgment as a matter of law on four issues:

1. That Plaintiff failed to establish a prima facie case of discrimination under the Michigan Persons with Disabilities Civil Rights Act ("PDA"), M.C.L. § 37.1101, et seq., because he has failed to show that he is qualified for the job by not being a "direct threat" in the workplace.
2. That Plaintiff failed to present any evidence as to the liability of Defendant Health Care and Retirement Corporation d/b/a Georgian Bloomfield.
3. That Plaintiff had not adequately explained his statements on a Social Security Disability Insurance application in which he stated that he was disabled.
4. That Plaintiff failed to mitigate his damages because he has stopped looking for work.

After hearing arguments on the matter, the Court took the motion under advisement. The Court later granted Defendants' motion with respect to the second issue only, dismissing Defendant Health Care and Retirement Corporation from the lawsuit, and continued to hold the remaining three

issues under advisement. Because the jury returned a verdict for Defendant, however, the remaining three issues are moot.

**ACCORDINGLY, IT IS HEREBY ORDERED** that Defendant's motion for judgment as a matter of law, with respect to the first, third and fourth issues, is **DENIED** as moot.

**SO ORDERED.**

Dated: October 24, 2005

s/Paul V. Gadola  
HONORABLE PAUL V. GADOLA  
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on October 31, 2005, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Karen B. Berkery; Lawrence J. Bunting, and I  
hereby certify that I have mailed by United States Postal Service the paper to the  
following non-ECF participants: George LaPlata.

s/Ruth A. Brissaud  
Ruth A. Brissaud, Case Manager  
(810) 341-7845